IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8529 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MINOR NILESHKUMAR S/O.DEEPAK KUMAR BHANUSHANKER PANDYA

Versus

KAPILABEN W/O. MADHUSUDAN CHANDULAL PANDYA SINCE DECD.

Appearance:

1. Special Civil Application No. 8529 of 1993

MR DN PANDYA for Petitioner No. 1

MR JF SHAH for Respondent No. 1

RULE SERVED for Respondent No. 1/1

MR BM MAHIDA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 16/01/2004

ORAL JUDGEMENT

The petitioner has challenged the validity of an order dated 26.3.1993 passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat. By virtue of the impugned order, the order dated 26.9.90 passed by the Collector, Bharuch, has been quashed and the Prant Officer, Rajpipla, has been directed to hear the concerned parties and pass an appropriate order.

2. The circumstances in which the impugned order had been passed, in a nutshell, are as under :

2.1 The question pertains to ownership right with regard to a residential house situated at Rajpipla bearing Survey No. 44 admeasuring approximately 154 sq.yds. The said property belonged to Lalitaben Kanchanlal Jani, daughter of late Shri Ramchandra Dayashanker Pandya, who expired on 12.12.1961. She had executed a will on 25.5.1961, whereby the property in question had been bequeathed to her two granddaughters, named, Mrudulaben and Minakshiben, who were daughters of her son Shri Laxmishanker, who had expired on 1.11.1959. Thus, according to the will, the property in question had been given to the aforestated two granddaughters.

2.2 When the property in question was mutated in the name of the aforestated two granddaughters, Kapilaben, wife of Shri Madhusudan Chandulal Pandya, and daughter of Lalitaben, had objected to the said mutation before the City Survey Superintendent, Bharuch. The City Survey Superintendent, Bharuch, had come to a conclusion that the property should have been mutated in the name of the aforestated granddaughters of Lalitaben and, therefore, Kapilaben, one of the daughters of Lalitaben, had challenged the validity of the said order of the City Survey Superintendent before the Prant Officer, Rajpipla. By an order dated 22.11.1982, the Prant Officer, Rajpipla, had remanded the matter to the City Survey Superintendent so that he can decide the matter afresh after giving notices to the concerned parties.

2.3 Upon remand, the City Survey Superintendent, Bharuch, had held that Kapilaben had a right in the property in question and, therefore, the present petitioner, being son of Minakshiben, one of the legatees and daughter of Lalitaben, had challenged the validity of the said order dated 27.3.89 before the Deputy Collector, Rajpipla. The Deputy Collector, Rajpipla, by his order dated 24.7.89, came to the conclusion that the decision taken by the City Survey Superintendent on 27.3.89 was just and proper and, therefore, the present petitoner had challenged the validity of the said order before the

Collector, Bharuch, who allowed the appeal and directed the parties to approach the civil court so that names of the persons, who had inherited the properties of late Lalitaben, can be ascertained and they can get their names mutated in the revenue record. The said order passed by the Collector dated 26.9.90 had been challenged by Kapilaben by filing a revision application before the State of Gujarat. The State of Gujarat allowed the revision application by giving a direction to the Prant Officer to hear the concerned parties and make necessary revenue entries thereafter.

3. This petition had been admitted by this court on 1.10.1993. The only person opposing the petition is the son and the only heir of Kapilaben, namely, Shri Janardan Madhusudan Pandya, who was brought on record as Kapilaben expired during the pendency of this litigation.

4. Respondent No. 1, namely, Shri Janardan Madhusudan Pandya, son of late Kapilaben, has filed an affidavit acknowledging the fact that his grandmother, Lalitaben, had prepared a will, whereby the property in question had been bequeathed in favour of Minakshiben and Mrudulaben, and he has no intention of challenging the validity of the said will and the property in question can be mutated in the names of Minakshiben and Mrudulaben. Minakshiben and Mrudulaben have already expired and their heir is minor Nileshkumar, who is the son of late Minakshiben.

5. By filing an affidavit dated 1.9.2003, Shri Janardan Madhusudan Pandya had made the above statement. This court wanted to have confirmation with regard to the affidavit of Shri Janardan Pandya, respondent No. 1 and, therefore, he was asked to remain personally present before this court on 6.11.2003. On that day, he had remained present before the court and had confirmed the averments, which had been made by him in his affidavit dated 1.9.2003, which was submitted to this court in Civil Application No. 4006/03 filed in this petition. The said fact has been recorded by this court on 6.11.2003.

6. Looking to the aforestated development, which has taken place, during the pendency of this petition, learned advocate Shri D.N. Pandya appearing for the petitioner has submitted that the property in question should be now mutated in the name of the mother of the petitioner and his maternal aunt as per the will dated 25.5.61 executed by late Lalitaben Kanchanlal Jani. In view of the fact that the only respondent, who is

opposing this petition, has conceded that the property should be mutated in the names of the legatees, as stated hereinabove, the grievance ventilated in the petition would not survive. It is to be noted that respondent No. 2 is cousin of the petitioner, who is supporting the petitioner.

7. Looking to the aforestated development, it may not be necessary to look at the legality or otherwise of the impugned order, especially when the only opposing respondent, i.e., respondent No 1, wants to respect the will prepared by his grandmother. In view of the aforestated facts, necessary revenue entry should be passed in favour of late Minakshiben and Mrudulaben and thereafter the property in question may be mutated in the names of their heirs.

8. In view of the fact that respondent No.1, namely, Shri Janardan Madhusudan Pandya, has already admitted the validity of the will executed by Bai Lalita, the objection which had been raised by his mother, namely, late Kapilaben Madhusudan Pandya, would not survive. It may not be necessary for the City Survey Superintendent to record statement of Shri Janardan Madhusudan Pandya, who has already admitted before this court, that he has no right in the property in question.

9. In view of the aforestated development which has taken place during the pendency of the petition, the Prant Officer and the concerned City Survey Superintendent shall pass necessary revenue entry in accordance with law.

10. Subject to the aforestated observation, the petition stands disposed of as allowed. Rule is made absolute to the above extent with no order as to costs. D.S. permitted.

(A.R. Dave, J.)
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